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**HAND-DELIVERED**

June 5, 2014

Mr. Kenny Asher  
Community Development Director  
City of Tigard  
Tigard Civic Center  
13125 SW Hall Blvd.  
Tigard, OR 97223

Re: Appeal of Planning Commission Decision  
Costco Wholesale – Application No. CUP2013-00002

Dear Mr. Asher:

This office represents Cain Petroleum with respect to the above-referenced matter. Cain Petroleum is appealing the City Planning Commission's approval of the above-referenced application. We enclosed the appeal form, appeal attachment (Exhibit A), and filing fee in the amount of \$3,006.

Please confirm your receipt of our appeal. Thank you for your assistance. I look forward to hearing from you.

Very truly yours,

HATHAWAY KOBACK CONNORS LLP

E. Michael Connors

EMC/pl  
Enclosure

cc: Cain Petroleum  
Ms. Agnes Kowacz, Associate Planner



City of Tigard

# Land Use Decision Appeal Filing Form

RECEIVED

JUN 05 2014

CITY OF TIGARD  
PLANNING/ENGINEERING

The City of Tigard supports the citizen's right to participate in local government. Tigard's Land Use Code, therefore, sets out specific requirements for filing appeals on certain land use decisions.

The following form has been developed to assist you in filing an appeal of a land use decision in proper form. To determine what filing fees will be required or to answer any questions you have regarding the appeal process, please contact the Planning Division or the City Recorder at the phone/fax listed at the top of this form.

## GENERAL INFORMATION

Property Address/Location(s) and Name(s) of the Application  
Being Appealed: 7850 SW Dartmouth St., Tigard, Oregon;  
Costco Wholesale

How Do You Qualify As A Party?: See Exhibit A.

Appellant's Name: Cain Petroleum C/O E. Michael Connors

Appellant's Address: 520 Yamhill St., Suite 235

City/State: Portland, OR Zip: 97204

Day Phone Where You Can Be Reached: (503) 205-8401

Scheduled Date Decision Is To Be Final: \_\_\_\_\_

Date On Which Notice Of Final Decision Was Given: \_\_\_\_\_

Specific Grounds For Appeal or Review: See Exhibit A.

## FOR STAFF USE ONLY

Case No.(s): CUP2013-00002

Case Name(s): Costco Fuel Station

Appeal Fee(s): \_\_\_\_\_

☐ Type II Director's Decision to HO/PC: \_\_\_\_\_

☐ Expedited Review (Deposit): \_\_\_\_\_

☐ Hearing Referee: \_\_\_\_\_

☒ HO/PC to City Council: \_\_\_\_\_

Total Fees: 3006

Receipt No.: 196351

Application Accepted: 6/5/14 By: AK

**Approved** As To Form: \_\_\_\_\_ By: \_\_\_\_\_

**Denied** As To Form: \_\_\_\_\_ By: \_\_\_\_\_

Rev. 6/24/2013  
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Decision.doc

## REQUIRED SUBMITTAL ELEMENTS

☒ Application Elements Submitted:

☐ Appeal Filing Form (completed)

☐ Filing Fee

(+ Transcript)

Signature(s) of Appellant(s):

E. Michael Connors

See Exhibit A.

## **Exhibit A - Appeal Filing Form**

The Appellant Cain Petroleum (the "Appellant") submits this Exhibit A to the attached Land Use Decision Appeal Filing Form (the "Appeal Filing Form") to provide the information requested in the Appeal Filing Form and required by the content of notice of appeal set forth in Community Development Code ("CDC") 18.390.040.G.2.

### **A. An identification of the decision being appealed, including the date of the decision.**

The Appellant is appealing the planning commission's decision, dated May 27, 2014, approving Costco Wholesale's Application No. CUP2013-00002, which proposes a Costco retail fuel station.

### **B. A statement demonstrating that the party filing the notice of appeal has standing to appeal.**

The Appellant has standing to appeal the planning commission's decision because: (1) the Appellant was mailed written notice of the public hearing and the planning commission's decision and therefore has standing pursuant to CDC 18.390.040.G.1.b; and (2) the Appellant submitted written and verbal testimony at the April 7 and May 5, 2014 public hearings before the planning commission.

### **C. A detailed statement of the specific issues raised on appeal.**

The Appellant intends to raise the following issues on appeal:

1. The planning commission erred in concluding that Costco demonstrated compliance with the applicable transportation standards. Tigard Community Development Code ("CDC") Sections 18.330.030(A)(3) and 18.810.020(A) require Costco to demonstrate that the transportation facilities have adequate capacity to accommodate the proposed fuel station. Costco's own traffic impact study ("TIS") concludes that the Highway 99W/SW Dartmouth Street intersection does not meet the City's operational standards and the proposed fuel station will worsen these conditions. The condition of approval requiring intersection improvements is legally impermissible because there is insufficient right-of-way for these improvements and Costco failed to demonstrate that these improvements are feasible.
2. The planning commission erred in concluding that Costco demonstrated compliance with CDC Section 18.620.010(B)(3). CDC Section 18.620.010(B)(3) requires all new development to "participate in funding future transportation and other public improvement projects in the Tigard Triangle Plan District, provided that the requirement to participate is directly related and roughly proportionate to the impact of the development." The planning commission concluded that Costco satisfied this requirement based on its payment of the Transportation Development Tax ("TDT"), when in fact the planning commission granted a full credit for the intersection improvements and determined "no TDT is required." The planning commission failed to impose the full amount of the proportionate share contribution based on the traffic impacts of the fuel station and erroneously granted Costco a complete TDT credit.

3. The planning commission erred by failing to adequately address the need for off-site shared parking agreements with neighboring properties. Costco's TIS concluded that parking was currently "at capacity" during peak hours, and therefore the reduction of parking due to the fuel station will result in an inadequate parking supply during peak times and consequential congestion. The City staff also concluded through field observations that the queuing of vehicles sometimes extends onto SW Dartmouth Street. Based on this evidence, the planning commission concluded: "To mitigate for this impact, this decision should be conditioned so that the applicant must develop, implement, and record signed agreements for an access / parking management plan that includes the establishment of an agreement(s) with neighboring property owner(s) to use some of their off-site parking for Costco employee parking during peak seasons in order to replace the 84 spaces removed for the fueling station. This standard can be met as conditioned." Planning Commission Decision, p.17. However, the planning commission failed to adopt this condition of approval. Additionally, this problem cannot be deferred through a condition of approval since Costco admits it cannot obtain such off-site shared parking agreements. The City must require Costco to provide the off-site shared parking agreements before it approves this application.
4. The planning commission erred by failing to address the transportation issues and deficiencies identified by Greenlight Engineering. Greenlight Engineering demonstrated in its letters, dated April 7, 2014 and May 5, 2014, and its testimony at the May 5, 2014 planning commission hearing, that Costco's traffic analysis is inadequate and failed to adequately address several issues. The planning commission ignored these issues and failed to adopt findings explaining why these issues and deficiencies are not required to be addressed.
5. The planning commission erred in concluding that CDC Section 18.620.040(A)(1) does not apply. CDC Section 18.620.040(A)(1) requires all street-facing elevations along public streets to "include a minimum of 50% of the ground floor wall area with windows, display areas or door openings." The planning commission erroneously concluded that this requirement does not apply because the "proposed structure is a fuel station canopy and does not contain any windows or doors." Planning Commission Decision, p.12. CDC Section 18.620.040(A)(1) applies to all non-residential buildings and there is no exception for fuel stations. It clearly requires that all non-residential buildings contain 50% windows, display areas or door openings on street-facing elevations. The fact that the fuel station does not contain any windows or doors is not a basis for concluding that this criteria does not apply, it is a basis for concluding that the proposed fuel station does not comply with this requirement.
6. The planning commission erred in concluding that Costco demonstrated compliance with CDC Section 18.620.090(C)(4) for purposes of the design adjustment requests to the setback and 50% building placement standards. CDC Section 18.620.090(C)(4) requires Costco to demonstrate that "granting the adjustment is the minimum necessary to allow the proposed use of the site." Costco failed to provide any evidence that it cannot site a fuel station on the property unless these adjustments are granted.

**D. A statement demonstrating that the specific issues raised on appeal were raised during the comment period.**

The Appellant raised all of the issues set forth in Section C above in its comment letters, dated April 7, 2014, April 28, 2014, and May 5, 2014. The Appellant also raised these issues in its testimony at the April 7, 2014 and the May 5, 2014 planning commission hearings.

**E. Appeal Fee.**

The Appellant included the appeal fee in the amount of \$3,006. The appeal fee was determined based on the City's 2013-2014 Land Use Applications Fee Schedule.